IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL W.P.NO.2249 OF 2005
WITH
CRIMINAL W.P.NO.2250 OF 2005

Paresh Jayantilal Khandwala ..Petitioner

Vs.

State of Maharashtra & Anr. ..Respondents

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Mr.Vivek Kantawala & Co. for Petitioner
Mr.P.G.Pravin for Respondent no.2
Mr.B.H.Mehta A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 3, 2005

P.C.

1. Heard the learned advocate for the petitioner-orignial accused no.3, learned advocate for the respondent no.2-original complainant and the learned A.P.P. for the State in both the matters.

2. Rule. By consent, rule made returnable forthwith.

3. The petitioner is seeking quashing of proceedings relating to C.C.No.124/S/2004 and 123/S/2004 pending before the learned Metropolitan Magistrate, 44th Court at Andheri, Mumbai. In the said cases, the petitioner who is original accused no.3, is facing prosecution under Section 138 r.w. 141 of Negotiable Instruments Act.

4. The learned advocate for the petitioner has submitted that at the time when cause of action arose, the petitioner was not a Director of the Company and as such, he could not be said to be liable under Section 138 of Negotiable Instruments Act. Reliance is placed on form no.32 which is annexed at Exhibit-B to the petition. The learned advocate for the respondent-original complainant had sought time on earlier occasion to ascertain the genuineness of form no.32. Today, Mr.Pravin the learned advocate for the respondent no.2-original complainant states that they admit the genuineness of form no.32 and they admit that in view of the said document, the petitioner could not be said to be liable. In this view of the matter, the respondent no.2-complainant is willing

to drop the name of petitioner i.e. original accused no.3 from the proceedings in the said cases. In view of the above facts, the proceedings in respect of petitioner i.e. original accused no.3 i.e. C.C.Nos.123/S/2004 and 124/S/2004 are quashed and set aside qua the petitioner only. It is made clear that the proceedings in the above cases, would continue in respect of other accused.

5. Rule made absolute accordingly in both the matters. Writ Petitions are disposed of.

[V.K.TAHILRAMANI,J.]